

HIGH COURT OF CHHATTISGARH, BILASPUR

MISC. CRIMINAL CASE NO. 1582 OF 2018

Rupesh Nilmalkar S/o Shri Pardeshi Nirmalkar Aged About 37 Years R/o-
Village- Dharampura, Tehsil And District- Raipur, Chhattisgarh.

... Applicant

Versus

State Of Chhattisgarh Through-The Police Station Mana Camp, Raipur,
District : Raipur, Chhattisgarh.

... Respondent

For Applicant	:	Shri Raza Ali, Advocate.
For Respondent-State	:	Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/04/2018

1. This is first bail application seeking grant of bail to the Applicant who is in jail since 07.09.2017 in connection with Crime No.145 of 2017 registered at Police Station Mana Camp, Raipur, for the offence punishable under Sections 363,366,376 IPC and Section 6 of the POCSO Act.
2. The allegation against the applicant as per prosecution is that, the present applicant on the pretext of marriage is said to have maintained physical relationship with the prosecutrix knowing fully well the fact that she was a minor. Later on, the prosecutrix is said to have disclosed this fact to her parents who in turn took the prosecutrix for lodging an FIR on 05.09.2017.
3. Learned Counsel for the applicant submits that the age of the prosecutrix was short by just couple of months from attaining the age of majority i.e. she was aged around more than 17 years and 9 months. A bare perusal of statements under Sections 161 and 164

CrPC it would reveal that there was a great element of consent given by the prosecutrix for the relationship which developed between the applicant and the prosecutrix. He further took the court through the statement of prosecutrix and submits that the prosecutrix had willingly gone along with the applicant to different place and as such there was a clear consensual relationship between the two. Thus, prayed for grant of bail

4. The State counsel opposing the bail application submits that irrespective of the fact that whether there was a consent or not, the fact that the prosecutrix was less than 18 years brings her within the category of minor. Therefore, even if there is consent, that is of no consequence and looking to the nature of offence, the applicant does not deserve bail.
5. Without commenting on the merits, considering the totality of the facts and circumstances of the case particularly the statement of prosecutrix under Sections 161 and 164 CrPC which clearly reflects that the prosecutrix was short of only couple of months from attaining the age of majority and the fact that she has willingly gone with the applicant to different place and at no point of time did she show any sort of protest or objection in having physical relationship whereas she had sufficient opportunity for raising an alarm seeking for help in case if the applicant would have taken her forcefully or without her consent, this Court is of the opinion that the present is a fit case where the Applicant can be enlarged on bail.
6. Accordingly, the application for grant of bail is allowed. It is directed that the Applicant shall be released on bail on his furnishing a personal bond for a sum of Rs.20,000/- with one surety of the like

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sum to the satisfaction of the concerned Trial Court for his appearance as and when directed.

Sd/-
(P. Sam Koshy)
Judge

Brij/inder